

## **3M EXHIBIT 61**

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STATE OF MICHIGAN

KENT COUNTY CIRCUIT COURT

Court File No. 2017-10716-CZ

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In re Nylaan Litigation  
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VIDEOTAPED DEPOSITION OF

RICHARD A. NEWMARK, PhD

- - - - -  
Taken October 23, 2019 By Kelly A. Herrick

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36  
37  
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1                   I N D E X  
2     Examination by Mr. Hoyle, page 5  
3     Examination by Mr. Grable, page 120  
4     Examination by Mr. Hoyle, page 192  
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9     INDEX OF EXHIBITS

10

11    NUMBER      DESCRIPTION

12

13    Exhibit 1724   3M\_NYLAAN00617346-47,  
14                   page 172

15    Exhibit 1725   3M\_NYLAAN01153396-98,  
16                   page 174

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18    Exhibit 1726   3M\_NYLAAN00080559-60,  
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27    PREVIOUSLY MARKED EXHIBITS REFERRED TO:

28    758, 533, 793, 444, 532, 535, 501, 536

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1 MR. O'DONOGHUE: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. HOYLE:

4 Q. The statement that you made in this report,  
5 which I've marked as Exhibit 535 in this  
6 litigation, that PFOSH most closely  
7 resembled the fluorine NMR spectrum given at  
8 the Chicago ACS meeting on August 26, 1975  
9 by W.S. Guy, was that statement one that you  
10 made based upon your expertise in the field  
11 of NMR analysis?

12 MR. O'DONOGHUE: Objection to form.

13 THE WITNESS: Yes.

14 BY MR. HOYLE:

15 Q. Did you believe that to be a true statement  
16 when you made it?

17 A. Yes.

18 Q. And by "true statement," I could expand that  
19 and say, did you believe it to be an  
20 accurate statement?

21 A. The problem is that NMR spectra are  
22 sensitive to a lot of conditions in the way  
23 they are run, such as the sample  
24 concentration, the solvents used, any other  
25 contaminants in that solution.

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1 Q. I appreciate that answer, but my question to  
2 you was: When you made this statement that  
3 you signed your name to on November 6, 1975,  
4 did you believe it to be accurate?

5 MR. O'DONOGHUE: Objection: Form;  
6 asked and answered.

7 THE WITNESS: The statement says it  
8 most closely resembles. It does not say it  
9 is.

10 BY MR. HOYLE:

11 Q. Did you ever do any analysis, after this  
12 report was generated on November 6, 1975, in  
13 which you compared additional samples and  
14 their NMR spectrum to the spectrum presented  
15 by Dr. Guy in Chicago in August of 1975?

16 A. I don't recall.

17 Q. As you sit here today, you have no  
18 recollection of ever doing additional work  
19 after this report was generated on  
20 November 6, 1975 which I've marked as  
21 Exhibit 535; is that fair?

22 MR. O'DONOGHUE: Objection to form.

23 THE WITNESS: I don't recall  
24 doing -- what was your original statement on  
25 that?

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1 A. I have it.

2 Q. And this is the Guy and Taves prepublication  
3 that counsel reviewed with you earlier in  
4 your deposition, correct?

5 A. Yes.

6 Q. Does Guy and Taves establish that there was  
7 widespread PFOS or PFOA in  
8 nonoccupationally-exposed people's blood?

9 MR. GRABLE: Objection to form.

10 THE WITNESS: No.

11 BY MR. O'DONOGHUE:

12 Q. Why not?

13 A. Because they pooled a hundred samples of  
14 blood, and there could have been one or two  
15 people who had high levels of their -- of  
16 organic fluoride in their blood.

17 And it also should be noted that  
18 they only recovered 30 -- roughly 30 percent  
19 of the organic fluorine.

20 Q. That's two points, and let's break those  
21 down. So, first of all, does Guy and Taves'  
22 article say anything about the occupations  
23 of the people in the pooled blood that you  
24 used?

25 A. No.

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1 Q. And why might that be important to know?

2 A. Because people who are exposed to these  
3 fluorochemicals in their occupations would  
4 have a higher level of fluorochemical in  
5 their blood.

6 Q. And then you said that it should also be  
7 noted that they only recovered roughly 30  
8 percent of the organic fluorine, correct?

9 A. Yes.

10 Q. I'd like you to turn to page 8 of the center  
11 numbers on the article, if you would.

12 And if you would go down to the  
13 bottom -- in fact, it's underlined in this  
14 draft -- it says, "These data show that  
15 about one-third of the original amount of  
16 organic fluorine in plasma is recovered in  
17 the major peak from the silicic acid  
18 chromatography. Another third is accounted  
19 for in other fractions and the rest is not  
20 accounted for, presumably because of  
21 adsorption to surfaces of containers in  
22 which samples were placed."

23 Do you see that, sir?

24 A. Yes.

25 Q. So, what is your understanding of what that

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1           sentence means -- those sentences mean?

2   A. That, when we are looking -- when they were  
3       looking at the NMR fractions, they were only  
4       looking at one-third of the total organic  
5       fluorine that was collected in the blood  
6       bank samples.

7   Q. Does it matter, in terms of the NMR spectra  
8       that was reported in Guy and Taves, that  
9       only 30 percent of the total organic  
10      fluorine from the plasma of blood banks was  
11      part of the sample analyzed?

12            MR. GRABLE: Objection to form.

13            MR. HOYLE: Join.

14            THE WITNESS: It's important to  
15       understand that there was a lot of other  
16       possible organic fluorine that we -- they  
17       have not identified.

18           BY MR. O'DONOGHUE:

19   Q. And, percentagewise, how much of --  
20       according to Guy and Taves, how much had  
21       they not identified?

22   A. They did not identify 33 percent -- I mean  
23       67 percent. They only identified  
24       33 percent.

25   Q. So, the majority?

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1 A. Yes.

2 Q. And if you turn to page 10 of the center  
3 numbers of the article, and again someone  
4 has underlined this for us already.

5 It says, "The prevalence of the  
6 particular compounds isolated and  
7 characterized here, i.e., perfluoro fatty  
8 acid (C6-C8) derivatives, is not known since  
9 the starting material for each batch shown  
10 in Figure 4 was pooled from between 25 and  
11 30 individuals and since only about one  
12 third of the original organic fluorine  
13 content was accounted for in the fractions  
14 containing these compounds."

15 Do you see that, sir?

16 A. Yes.

17 Q. What do you understand that to mean?

18 A. That, again, just a couple of individuals  
19 could have had high fluorine levels, and we  
20 are -- and they are looking at the total  
21 organic fluorine, after combining all 100  
22 samples, or whatever samples were left after  
23 their earlier analyses.

24 Q. Is it possible that the spectra shown in the  
25 Guy and Taves article is that of only one or

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1 two of the 106 people's plasma that was  
2 used?

3 MR. GRABLE: Objection to form.

4 MR. HOYLE: Objection: Foundation.

5 THE WITNESS: Yes.

6 BY MR. O'DONOGHUE:

7 Q. Does the NMR spectra in Guy and Taves'  
8 article necessarily reflect the identity of  
9 the compound that makes up the majority of  
10 the organic fluorine in the human blood  
11 samples they started with?

12 MR. GRABLE: Objection to form;  
13 foundation.

14 MR. HOYLE: Join.

15 THE WITNESS: Because we don't know  
16 what the other 67 percent of the organic  
17 fluorine is, we can't be absolutely certain  
18 of that.

19 BY MR. O'DONOGHUE:

20 Q. If you could pull Exhibit 535 in front of  
21 you. This is the Central Analytical  
22 Laboratory report from November 6, 1975 you  
23 ran as a comparator to Guy and Taves?

24 A. Yes.

25 Q. Do you have it there, sir?

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1 A. Yes.

2 Q. So, Counsel asked you a number of questions  
3 about this exhibit where you wrote, "Of the  
4 compounds submitted C8F17SO3H resembled most  
5 closely the fluorine NMR spectrum given at  
6 the Chicago A.C.S. meeting in August 26,  
7 1975, by W.S. Guy."

8 Do you see that?

9 A. Yes.

10 Q. And just as a language issue, I believe  
11 opposing counsel established with you that  
12 C8F17SO3H is PFOSH or perfluorooctanoic  
13 sulfonic acid; is that correct?

14 A. Yes.

15 Q. Was your NMR spectra analysis definitive  
16 identification of the compound in the Guy  
17 and Taves article as perfluorooctanoic  
18 sulfonic acid?

19 MR. GRABLE: Objection to form.

20 MR. HOYLE: Join.

21 THE WITNESS: No. It just says it  
22 most closely resembled that material.

23 BY MR. O'DONOGHUE:

24 Q. And why was it not definitive, sir?

25 MR. GRABLE: Same objection.

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1 MR. HOYLE: Join.

2 THE WITNESS: There are two things  
3 to be considered: One is we could never --  
4 we did not have their sample in order to  
5 spike it, or somehow compare it definitively  
6 with the sample that we had.

7 Second, all NMR spectra are very  
8 sensitive to concentration and solvent, and  
9 I am quite certain that we did not run the  
10 spectra at the same low concentration that  
11 they did because it took them 16 hours,  
12 roughly, to obtain their spectra, and our  
13 instrument was no more sensitive than their  
14 instrument.

15 BY MR. O'DONOGHUE:

16 Q. Turning to page 9 of the Guy and Taves  
17 article, sir, down at the bottom there it  
18 says: The difference in shift for Peak E is  
19 consistent with the presence of, and then it  
20 lists some compounds, or possibly the  
21 presence of a sulfonic acid derivative as  
22 the functional group.

23 Do you see that, sir?

24 A. Yes.

25 Q. Did the Guy and Taves article identify